

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PHILLIP BRATTAIN, as an individual, and
on behalf of all others similarly situated,

No. C-12-5171 EMC

Plaintiff,

v.

**ORDER RE NOTICE OF
SUPPLEMENTAL AUTHORITY**

SAFEWAY, INC.,


Defendant.

On February 28, 2013, Plaintiff filed a notice of supplemental authority calling this Court's attention to a recent Supreme Court case that Plaintiff contends "mandates that in class action cases, issues related to class certification should be decided prior to issues related to the merits of the case." Docket No. 21. This Court has reviewed the case, and finds Plaintiff's statement to be inaccurate. The case, *Amgen Inc. v. Connecticut Ret. Plans & Trust Funds*, held that in a class action under § 10(b) of the Securities Exchange Act, the plaintiff need not prove the materiality of public misstatements about the value of stock as a prerequisite to class certification. ___U.S. ___, 133 S. Ct. 1184 (U.S. 2013). The Court's holding that materiality need not be addressed prior to class certification, does not, as Plaintiff suggests, mandate that a court *must* address class certification prior to considering the merits of the case in all circumstances. Nothing in *Amgen* indicates that it was improper for this Court, in the exercise of its discretion over matters of case management, to allow a motion for summary judgement on certain issues going to the merits of

1 Plaintiff's claims prior to considering a motion for class certification. Accordingly, this Court
2 **DENIES** Plaintiff's request to amend the scheduling order set at the February 28, 2013 case
3 management conference.

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5 IT IS SO ORDERED.

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7 Dated: March 8, 2013

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EDWARD M. CHEN
United States District Judge